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8 UNITED STATES DISTRICT COURT

9 DISTRICT OF ARIZONA

10 In Re Bard IVC Filters Products  
Liability Litigation

No. MD-15-02641-PHX-DGC

**PLAINTIFFS' CO-LEAD/LIAISON  
COUNSEL'S MEMORANDUM RE  
LEADERSHIP APPOINTMENTS**

(Assigned to the Honorable David G.  
Campbell)

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17 As noted by the Court in the Order issued January 3, 2019 [Doc. 14138] – “In Case  
18 Management Order (CMO) No. 1, entered October 30, 2015, the Court appointed  
19 Plaintiffs’ Leadership Counsel (PLC) consisting of lead/liaison counsel and a steering  
20 committee. [Doc. 248.] The appointment was to last for a term of one year from the date  
21 of the order. *Id.* at 7.”

22 CMO No. 1 specifically states “Appointments to leadership positions in this order  
23 last for a term of one year from the date of this order unless terminated earlier by the  
24 Court. Thirty days before the expirations of this one-year term, Lead/Liaison Counsel  
25 shall file a memorandum notifying the Court of the need to make further appointments  
26 and making recommendations regarding those appointments.” *Id.* at 7-8.

27 On October 31, 2016, Plaintiffs’ Lead/Liaison Counsel filed its “Memorandum Re  
28 Leadership Appointments” [Doc. 3847] in compliance with CMO No. 1.

1 As the Court further notes, “On November 16, 2016, the Court amended CMO No.  
2 1 to add an executive committee to the PLC and extend the term of appointment for one  
3 year. Doc. 4016. In the Second Amended CMO No. 1, the Court approved certain  
4 substitutions to the PLC and confirmed that the appointment of all leadership positions  
5 shall last until November 16, 2017. Doc. 5285. Lead counsel was directed to file a  
6 memorandum notifying the Court of the need to make further appointments 30 days  
7 before the term expired. *Id.* at 9.”

8 As the Court notes in its Order [Doc. 14138], dated January 3, 2019, Plaintiffs’  
9 lead counsel failed to adhere to the mandate of CMO No. 1 [Doc. 248] entered October  
10 30, 2015, which approved the appointment of Plaintiffs’ Leadership Counsel (PLC)  
11 consisting of lead/liaison counsel and a steering committee for one-year terms since  
12 having filed said annual report on October 31, 2016, and the November 16, 2016  
13 Amended CMO 1 that followed.

14 On March 15, 2017, Plaintiffs’ Co-Lead/Liaison Counsel filed a Memorandum  
15 requesting substitution of leadership appointments. [Doc. 5236] As a result, the Court (1)  
16 approved the appointment of Mark S. O’Connor, then with Gallagher & Kennedy, P.A. as  
17 Plaintiffs’ Co-Lead and Local/Liaison Counsel in place of Robert W. Boatman, also of  
18 Gallagher & Kennedy, P.A., and (2) approved the appointment of Sheila Bossier, formerly  
19 with and in place of Freese & Goss, as a member of the PSC under the firm name Bossier  
20 & Associates.

21 Since this last change in Plaintiffs’ Leadership Counsel, Co-Lead Counsel and the  
22 PSC have been actively involved in the finalization of discovery, generic expert  
23 discovery, the bellwether selection process and the trials of 3 (three) bellwether cases  
24 before the Honorable David G. Campbell, in Phoenix, AZ, the third of which was  
25 completed and verdict reached on October 5, 2018, and more recently engaged internally  
26 and with defense counsel, in discussions regarding the potential for settlement of cases  
27 subject to MDL 2641.

1 While the original one-year report requirement was calendared for the original  
2 CMO No.1, and thus was filed, timely, that calendaring did not repeat for the ensuing two  
3 years. Lead Counsel respectfully apologizes for this oversight, and assures the Court that  
4 this was an inexcusable calendaring error for which Lead Counsel assumes full  
5 responsibility, and, if approved to continue in their capacity as Lead Counsel, assures the  
6 Court that this compliance failure will not occur again.

7 In accordance with this Court's Amended Case Management Order No. 1 [Doc.  
8 4016], Plaintiffs' Co-Lead/Liaison Counsel submits this memorandum regarding  
9 appointments to the PLC.

10 After more than three years of this MDL litigation, Plaintiffs' Co-Lead Counsel are  
11 proud to report that the leadership structure appointed by this Court has been both highly  
12 active and highly effective. The attorneys this Court appointed and their firms have  
13 brought considerable experience in mass tort litigation to this MDL and have collectively  
14 committed thousands of hours (and millions of dollars of costs assessments) to the  
15 litigation. The leadership group has been very effective in working together to prosecute  
16 this litigation. Co-Lead Counsel and the PSC firms have been active in discovery with  
17 numerous attorneys and law firms taking and participating actively in depositions,  
18 ongoing document reviews, expert reports, law and briefing, state-federal coordination,  
19 trial preparation, trials, and in some instances, settlements of state court cases with  
20 impending trial dates. More recently, all members of the PLC have fully cooperated with  
21 the PEC's plans, strategy and need for data and input surrounding the PEC's "global"  
22 settlement discussions with Defendants, which is ongoing

23 All counsel has worked together collegially and collectively and for the benefit of  
24 all of the plaintiffs in this MDL (a significant number of whom are represented by firms in  
25 leadership).

26 Subject to the following proposed changes to the PLC, Co-Lead Counsel and all  
27 PLC/PSC members recommend re-appointment of Co-Lead Counsel, Plaintiffs' Executive  
28 Committee and all PSC/PLC members.

1           Withdrawal from the PSC/PLC

2           Mr. Nate Van Der Veer has recently terminated his employment at Farris, Riley &  
3 Pitt LLP, Birmingham, AL, and will be focusing his ongoing professional career on  
4 matters that will not permit the time and commitment required of him in his PSC position  
5 on MDL 2641. Mr. Van Der Veer does not seek reappointment to the PSC.

6           Substitution of PSC Appointment

7           Ms. Calle Mendenhall has recently joined the law firm of Farris, Riley & Pitt LLP,  
8 specifically to take on the role and responsibilities in the Bard IVC filters litigation and  
9 other matters formerly assigned to Mr. Van Der Veer.

10          Plaintiffs' Co-Lead Counsel and the other PSC Members support Ms.  
11 Mendenhall's appointment. A copy of her declaration and résumé supporting her  
12 application for substitution appointment are attached as Exhibit A.

13          Plaintiffs' Co-Lead Counsel and the other members of the PSC support this  
14 substitution and request that the Court appoint Ms. Mendenhall to the PSC.

15           Change of Firms by Co-Lead Counsel, Mark S. O'Connor

16          On November 9, 2018, Mr. Mark S. O'Connor filed a Notice of Change of Address  
17 and Firm Name [Doc. 13330]. Mr. O'Connor is now a member of the Beus Gilbert PLLC  
18 firm in Phoenix, AZ. Mr. O'Connor seeks to keep his position as co-Lead Counsel as a  
19 member of his new firm, while Shannon Clarke of Gallagher & Kennedy remains a  
20 member of the PLC/PSC.

21           Change of Firm Name of PLC/PSC Member, John Dalimonte

22          As of October, 2016, PLC/PSC member, John Dalimonte, changed law firms. His  
23 current firm is Dalimonte Rueb, LLP, 85 Devonshire Street, Suite 1000, Boston, MA  
24 02109. Mr. Dalimonte and his new partner, Mr. Gregory Rueb, have both been very  
25 actively involved and committed to this litigation in both this MDL and state courts,  
26 having recently prepared and resolved a Recovery device case in Delaware state court on  
27 the eve of trial. Mr. Dalimonte desires to maintain his current position on MDL 2641  
28 PLC/PSC as a member of Dalimonte Rueb, LLP.

1           Reappointment of Plaintiffs' Executive Committee

2           While many members of the PSC would qualify and are worthy of such an  
 3 appointment, Co-Leads previously recommended and requested the following current  
 4 members of the PLC/PSC to serve in the capacity of a six-member PEC that includes Co-  
 5 Leads, Mr. Ramon R. Lopez and Mr. Mark O'Connor, and PLC/PSC members, Mr.  
 6 Howard Nations, Ms. Julia Reed Zaic, Mr. Russell Budd and Ms. Wendy Fleishman, and  
 7 the Court approved these appointments and the formation of this PEC [Doc. 248]. Each  
 8 member of this PEC has fulfilled his or her stated duties and commitments to the  
 9 important work of this committee. Each current member requests to remain a member of  
 10 the PEC and has renewed his or her commitment to the structure and purpose of this  
 11 committee. They and other members of their firms have been significantly involved in  
 12 virtually every aspect of this litigation since inception. This PEC, as constituted, will  
 13 continue to enhance the ability of our PLC to meet the demands of the completion of our  
 14 duties and commitment to this case.

15           Conclusion

16           Accordingly, Plaintiffs' Co-Lead/Liaison Counsel and the PSC request that this  
 17 Court reappoint Plaintiffs' Co-Lead/Liaison Counsel, Plaintiffs' Executive Committee,  
 18 and reappoint the members of the PSC with the following changes: (1) removing Nate  
 19 Van Der Veer from the PSC, (2) appointing Calle Mendenhall as Mr. Van Der Veer's  
 20 replacement on behalf of the Farris, Riley and Pitt firm, and (3), John Dalimonte  
 21 continuing is role as member of PLC/PSC under the firm name, Dalimonte Rueb, LLP  
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23           RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of January 2019.

24   BEUS GILBERT PLLC

25   By: /s/ Ramon Rossi Lopez

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  LOPEZ McHUGH LLP

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Ramon Rossi Lopez (CA Bar No. 86361)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>th</sup> day of January 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/Marilyn B. Wass